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OFFICE OF PETITIONS

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In re Patent No. 7,470,791	: ON PETITION
Kohl et al.	: UNDER 37 CFR 1.183
Issue Date: 12/30/2008	: and
Application No. 10/531720	: ON REQUEST FOR
Filing or 371(c) Date: 04/18/2005	: RECONSIDERATION OF
Attorney Docket No. 26737U	: PATENT TERM ADJUSTMENT

This is a decision on the "Reply to Dismissal of Request for Recalculation of Patent Term Adjustment in View of Wyeth," filed May 20, 2010. The reply is properly treated as a petition under 37 C.F.R. § 1.183, requesting suspension of the time limit for consideration of a request for reconsideration of a patent term adjustment ("PTA").

This petition is hereby **dismissed**.

Your petition for recalculation/reconsideration of the USPTO's PTA determination for U.S. Patent No. 7,470,791 is dismissed as untimely. On February 1, 2010, the USPTO published a Federal Register notice that, *inter alia*, announced a limited waiver of the two-month deadline for filing a petition for reconsideration of a PTA determination under 37 CFR sec. 1.705(d). See *Interim Procedure for Patentees to Request a Recalculation of the Patent Term Adjustment to Comply with the Federal Circuit Decision in Wyeth v. Kappos Regarding Overlapping Delay Provisions of 35 U.S.C. sec. 154(b)(2)(A)*, 75 Fed. Reg. 5043 (Feb. 1, 2010) (notice).

Specifically, patent owners were permitted to request recalculation of a patent's PTA in view of the Federal Circuit decision *Wyeth v. Kappos*, 591 F.3d 1364 (Fed. Cir. 2010) up to 180 days after the grant of the patent. The USPTO determined not to accept any requests for PTA recalculation initially filed more than 180 days after patent grant, however, in view of the statutory judicial-review provisions of 35 U.S.C. sec. 154(b)(4), which require that any civil action to challenge the USPTO's PTA determination be brought within 180 days of patent grant. The USPTO believes that the statutory 180-day period for seeking court review of the USPTO's PTA determinations, particularly in view of the six-year statute of limitations that otherwise is applicable for actions under the Administrative Procedure Act, indicates a congressional intent that PTA issues be resolved shortly after a patent issues. The USPTO does not consider it likely

that Congress created a scheme under which the time period to seek initial USPTO review of a PTA determination extends beyond the time period provided for a dissatisfied patentee to seek judicial review of the USPTO's PTA determination. Thus, the USPTO believes that the 180-day period in 35 U.S.C. sec. 154(b)(4) represents the outer limit on the USPTO's ability to consider a patentee's initial request for PTA determination {to conclude its PTA determination}."

The present petition under 37 CFR 1.183 is requesting suspension of the time limit for consideration of an application for patent term adjustment under 37 CFR 1.183 is **dismissed**.

A review of the petition reveals that the address appearing on the petition differs from the correspondence address of record. Applicant is advised that, in patented files: requests for changes of correspondence address, powers of attorney, revocations of powers of attorney, withdrawal of attorney and submissions under 37 CFR 1.501: Designation of, or changes to, a fee address, should be addressed to Mail Stop M Correspondence.

The fee for the petition under 37 CFR 1.183 has been charged to petitioner's deposit account as authorized in the petition.

This patent file is being referred to the Files Repository.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3232.

/DLW/

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